

GOVERNMENT OF ANDHRA PRADESH
A B S T R A C T

Public Service – Commercial Taxes Department – Sri P. Nageswara Rao, Commercial Tax Officer, O/O State Representative before Sales Tax Appellate Tribunal, Visakhapatnam promoted as Assistant Commissioner (CT) on par with junior Sri H. Govindappa in the panel year 2004-05 – Orders – Issued.

Revenue (CT-I) Department

G.O.Rt.No.1807

Dated:24-12-2009

Read the following:

- 1.Proceedings of the meeting of the Screening Committee held on 15.1.2005.
2. G.O.Ms.No.168, Revenue (CT-I) Department, dt.2.2.2005.
3. Representation of Sri P. Nageswara Rao, formerly, C.T.O., (Audit), No.II Division, Vijayawada, dated: 11.12.2006.
4. Representation of Sri P. Nageswara Rao, dated: 29.1.2007.
5. Hon'ble Tribunal orders in O.A.No.6352/09, dated: 13.11.2009.

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ORDER:

In the reference 1st read above, the name of Sri P. Nageswara Rao, Commercial Tax Officer came up for consideration before the Screening Committee which met on 15.1.2005 for preparation of the panel of C.T.Os for promotion to the post of Assistant Commissioner (CT) for the panel year 2004-05. The Screening Committee, after going through the ACRs, relevant records and other material papers including the disproportionate assets case relating to Sri P. Nageswara Rao and after making an over all assessment of his service record and general assessment of work done decided that his case came under the category (ii) of para (2) of G.O.Ms.No.424, GA (Ser.C) Department, dt.25.5.1976 and hence, recommended that Sri P. Nageswara Rao was unfit for promotion and be passed over for promotion in terms of the orders issued in G.O.Ms.No.424, GA (Ser.C) Department, dated: 25.5.1976.

In the reference 3rd read above, Sri P. Nageswara Rao, made a representation to place his name in the regular promotion panel of Assistant Commissioners for the panel year 2004-05 over and above his immediate junior Sri H. Govindappa as no charges were pending against him on the qualifying date for determining a candidate's eligibility for promotion for the panel year 2004-05 i.e., 1.9.2004.

On examination of the issue, it is observed from records that charges were framed against Sri P.Nageswara Rao in memo no. 48143/Vig I/1/2004-2 dt.30.5.2006 for allegedly having disproportionate assets and a case was registered on 17.12.2004 and orders were also issued to prosecute him vide GO Ms.No. 694 Revenue (Vig I) Department dt. 14.6.2006. The individual was later reinstated in to service vide memo no. 48143/Vig I(1)/2004-4 dt. 2.5.2007.

Sri P. Nageswara Rao, vide his representation in reference 4th read above, again represented that it was not proper to defer his name for promotion to the post of AC(CT) in the panel year 2004-05 as there was neither disciplinary nor criminal proceedings initiated or pending against him as on the crucial date of panel year 2004-05 i.e. 1.9.2004. He also stated that he came to know that in spite of the disproportionate assets cases registered and pending against some of the Officers by the panel date in other departments like I&CAD Department, Industries & Commerce Department and Excise Department they have been promoted to the higher categories whereas in his case by the panel date of 1.9.2004 no case was registered against him. But the Screening committee considered and

deferred his name only on account of case registered by the ACB against him. He has also represented that the ACB's disproportionate assets case against him was at a preliminary stage at the time of conducting the Screening Committee meeting in January 2005. Moreover no charge sheet was filed by the ACB Officials nor charge memo was issued by the disciplinary authority.

In Go MS.No. 66, GA(Ser C)Department dt. 30.1.1991 orders were issued stating that promotion /appointment by transfer to a higher post in respect of officers who are facing disciplinary proceedings or a criminal case or whose conduct is under investigation and whose case falls under the group referred to in para 2(iii) of GO MS.No 424. GA (Ser C)Department dt. 25.5.1976 shall be deferred, only when charges of misconduct are framed by the competent authority and served on the concerned delinquent officer or a charge sheet has been filed against him/her in a criminal court, as the case may be. Further in recent judgement in Union of India Vs Sangram Keshri Nayak reported in 2007(6) SSC 704, the Apex court held that consideration for promotion to a higher or selection grade post cannot be withheld merely on the ground of pendency or contemplated initiation of disciplinary proceedings. The Screening Committee ought to have taken into consideration the orders of the Government issued in Go MS.No. 66, GA(Ser C)Department dt. 30.1.1991, while recommending for passing over Sri P. Nageswara Rao for promotion during the panel year 2004-05 in case he was otherwise fit for promotion, which has not been done in this case and thus he could not have been passed over merely on the ground of pendency or contemplation of criminal proceedings. His service records relevant for the panel year 2004-05 were also excellent because of which he could not have been categorized under para (2) (ii) of G.O.Ms.No.424, G.A. (Ser.C) Department, dated: 25.5.1976.

Sri P. Nageswara Rao, Commercial Tax Officer has also filed O.A.No.6352/2009 in APAT for considering of his name for inclusion in adhoc panel of Assistant Commissioners for the panel year 2004-05. The Hon'ble A.P.A.T., have in its orders dated: 13.11.2009 directed the Government to consider the case of Sri P. Nageswara Rao, for promotion as Assistant Commissioner of Commercial Taxes department for the panel year 2004-05 and while considering his case, the disproportionate assets case, which was registered during the year 2004-05, shall not be taken into account, in the light of the judgements of the Hon'ble Supreme court.

Government have examined the matter carefully and keeping in the mind the orders of the Hon'ble Tribunal, as mentioned above, hereby order that under rule 10 (a) of Andhra Pradesh State and Subordinate Service rules, 1996, Sri P. Nageswara Rao, is promoted as Assistant Commissioner (CT) in the A.P. Commercial Taxes Services in the Scale of pay of Rs. 14600-29250 on par with his junior Sri H. Govindappa, in the panel year 2004-05 as no charges were framed and pending against him during the panel year 2004-05 and since his records of service were very good.

The temporary promotion ordered in the above para is subject to the following conditions:-

- i)the promotion is purely temporary and adhoc and shall not confer any right of preferential treatment at the time of regularization in the cadre;
- ii)the promotion is subject to review and re-adjustment after publication of final combined seniority list of Commercial Tax Officers and further review at subsequent stage as required under the S.R. Act; and

iii)the promotion is also subject to the outcome of any RPs/WPs/OAs/CAs, if any, pending with APAT/ Courts.

The Commissioner of Commercial Taxes, A.P., Hyderabad is requested to take necessary further action in the matter and send necessary proposal for issuing posting orders to Sri P. Nageswara Rao as Assistant Commissioner, Commercial Taxes.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

ASUTOSH MISHRA
PRINCIPAL SECRETARY TO GOVERNMENT

To

The Officers concerned, through Commissioner of Commercial Taxes, A.P., Hyderabad.

The Commissioner of Commercial Taxes, A.P., Hyderabad.

The Accountant General, A.P., Hyderabad.

The Pay and Accounts Officer, Hyderabad.

The Commissioner of Information & Public Relations Department.

The G.P. for Revenue, Hon'ble A.P.A.T., A.P., Hyderabad

Copy to :

The General Administration (D.P.C.) Department

P.S. to Hon'ble Chief Minister.

// FORWARDED BY ORDER //

SECTION OFFICER